Part IV

Conclusion

To achieve a fully competitive telecommunications market, co-carrier status must be acknowledged for all exchange service providers that provide functionally equivalent (or similar) services within that market. Technical differences among carriers based on directionality of traffic or call duration are irrelevant to co-carrier *status*, but are important to the method of compensation. In the developing CMRS competitive marketplace, all players must be afforded a fair advantage to compete. Discrimination against competitive providers—or even among competitive providers—does not serve the public interest. Compensation arrangements between LECs and CMRS providers determine the effectiveness of interconnection policies. Therefore, these arrangements must not promote the old policy of pricing above cost for services to other carriers in order to subsidize universal service. Promoting full competition requires that all co-carriers be entitled to receive compensation for the costs they incur in terminating calls received from other carriers.

Qualifications of Mark Drazen

I am a graduate of the Massachusetts Institute of Technology, with the degrees of Bachelor of Science in Mathematics, Master of Science in Electrical Engineering, and Electrical Engineer. In addition, I have taken courses in accounting at the graduate school of Business Administration at Washington University (St. Louis).

I have testified in rate proceedings and court cases before federal agencies (the Federal Energy Regulatory Commission and Canada's National Energy Board), in 32 of the United States (Alabama, Alaska, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, West Virginia, Wisconsin and Wyoming) and in three provinces in Canada (Alberta, British Columbia, Ontario and Saskatchewan). This testimony has covered all aspects of utility rate-making, including revenue requirements, rate base, operating income, valuation, cost of capital, cost of service and rate design.

The firm of Drazen Associates, Inc. has provided design and consulting services since 1937. In 1972, the utility rate and economic consulting activities were taken over by Drazen-Brubaker & Associates, Inc.

In 1995, the firm was reorganized. Drazen Consulting Group, Inc. now provides economic, strategic planning and regulatory consulting services to clients that include industry, schools, hospitals, utilities and government agencies. For regulatory proceedings, we regularly prepare studies relating to revenue requirements and rate design. We also prepare valuation, forecast and feasibility studies relating to utility service, and assist in the negotiation of contracts for utility service. Our experience encompasses most major utilities throughout North America.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers)

CC Docket No. 95-185

REPLY OF PAGING NETWORK, INC.

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SUMMARY

In its initial comments, PageNet demonstrated that, in order for the Commission to realize its goals of promoting the growth of -- and competition for -- CMRS services, paging carriers require two forms of relief in the instant proceeding: 1) The prescription of fully compensatory rates that LECs will pay to paging carriers for terminating service handed off by the LECs. These rates should be applied on a per-call basis, and should be based on currently effective LEC tariffed switched access charges, at least for an interim period. 2) LECs should be prohibited for charging paging carriers for the transport link between the LEC switch and the paging carrier's mobile telephone switching office; the LECs already receive full compensation for this function in the access charges that they collect from interexchange carriers or originating end users. Nothing in the record of this proceeding militates against the granting of such relief.

The LECs attempt to characterize the existing CMRS interconnection arrangements as fair and equitable, and even suggest that CMRS providers are content with them. The CMRS carriers filing comments in this proceeding, however, unanimously provide evidence that belies this characterization. The record clearly shows that existing interconnection arrangements impose excessive and unreasonable costs upon, and discriminate against, CMRS providers. These arrangements have been the subject of extensive litigation on both the state and federal level, and

demonstrate that CMRS providers have no negotiating leverage in their dealings with LECs. As a result, the existing arrangements cannot be perpetuated, even for an interim period.

The various pricing proposals espoused by the LECs in their initial comments are not reasonable substitutes for the compensation plan proposed by PageNet. Alternatives such as long run incremental costs plus Ramsey pricing; further reliance on LEC/CMRS provider negotiations; or conditioning CMRS interconnection on access charge reform are unworkable, will not result in reasonable interconnection rates, and will unduly delay reasonable interconnection.

The Commission has full authority to provide the relief requested by PageNet. As PageNet explained in its initial comments, the Telecommunications Act of 1996 specifically preserves the Commission's exclusive jurisdiction over CMRS interconnection rates under Section 332 of the Omnibus Budget Reconciliation Act of 1993. LEC arguments to the contrary are contradicted by the plain language of the Act.

Finally, arguments by two LECs that paging carriers should be excluded from the Commission's CMRS interconnection rules are patently anticompetitive and unreasonably discriminatory. The LECs provide no technical, legal or policy arguments that can justify such action.

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REPLY OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its undersigned counsel and pursuant to the Commission's Order of February 16,[1] respectfully submits its Reply to initial comments filed in the above-captioned proceeding.

I. GENERAL COMMENTS

In its initial comments, PageNet demonstrated that existing interconnection arrangements, which arose from CMRS negotiations with local exchange carriers ("LECs"), fail to compensate PageNet and other paging carriers for network terminating functions that they perform and unreasonably discriminate against paging carriers vis-à-vis other interconnecting parties. As PageNet discusses below, the

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[1] *Order and Supplemental Notice of Proposed Rulemaking*, CC Docket No. 95-185 & CC Docket No. 94-54, FCC 96-61 (February 16, 1996).

comments filed by other CMRS providers in this proceeding universally support PageNet's arguments.

As set forth herein, these existing arrangements must not be perpetuated but must be replaced by a reasonable and fully compensatory interconnection system prescribed by the Commission. The Commission has ample authority under the Communications Act, as amended by the Telecommunications Act of 1996, to do so.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS: THE RECORD IN THIS PROCEEDING DEMONSTRATES THE IMMEDIATE NEED FOR PRESCRIPTION OF NONDISCRIMINATORY AND FULLY COMPENSATORY CMRS INTERCONNECTION RATES

Even a cursory review of the initial comments filed in the instant proceeding make clear that the providers of competitive CMRS service universally support immediate Commission action in prescribing fully compensatory and nondiscriminatory interconnection. That the LECs demonstrate a similarly united front in opposing such action by the Commission speaks for itself and makes clear that the LEC arguments for maintenance of the status quo are in fact arguments for the maintenance of barriers to effective competition. As PageNet discusses below, the record in this proceeding presents a compelling case for immediate prescriptive action by the Commission.

A. COMPENSATION ARRANGEMENTS

1. EXISTING COMPENSATION ARRANGEMENTS: The LECs Grossly Mischaracterize Existing CMRS Interconnection Arrangements -- These Arrangements Cannot Serve As An Interim Interconnection Solution

Most of the LECs argue that no Commission action is needed at this time because the CMRS interconnection agreements that are currently in effect are adequate.[2] Several LECs assert that an absence of formal complaints against the existing interconnection arrangements,[3] and the growth of the CMRS industry,[4] demonstrate that the existing interconnection arrangements are fair and effective. As discussed below, however, these assertions are belied by the statements of the competitive CMRS service providers participating in this proceeding -- including CMRS affiliates of the LECs.

In its Comments, PageNet demonstrated that the interconnection arrangements that it had negotiated with LECs over the past decade have resulted in wildly varying rates for similar LEC services, double -- and sometimes triple -- recovery of costs by LECs, and unreasonable discrimination against paging carriers.[5] PageNet's own experience, and the comments filed by

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2 *E.g.*, Ameritech at 5; BellSouth at 16, 22-23; SBC at 13-14; US West at 3 and *passim;* USTA at 7-9.

3 *E.g.*, Ameritech at 4; Bell Atlantic at 9; US West at 22.

4 *E.g*, Bell Atlantic at 10-12; GTE at 5, 37-38; NYNEX at 12; US West at 2-4.

5 PageNet at 19-23 and Appendix B.

other CMRS providers in this proceeding, provide overwhelming evidence that the CMRS interconnection arrangements established through negotiations with LECs are unreasonable, and cannot be perpetuated, even on an interim basis.

Virtually all CMRS commentors demonstrate that, despite a statutory mandate, LECs have refused to provide compensation to CMRS providers for their role in terminating traffic handed off by the LEC.[5] Moreover, several commentors echo PageNet's experience that some LECs have forced CMRS providers to pay the LEC for traffic that the CMRS provider terminates on its own network.[7] The CMRS providers' comments also confirm PageNet's observations that the LEC interconnection arrangements are egregiously discriminatory,[8] and include duplicative charges.[9]

Several LECs attempt to justify the retention of existing interconnection arrangements by claiming that CMRS providers have not contested them, and so have conceded that the arrangements are reasonable. This assertion is simply wrong -- the history of negotiated CMRS interconnection arrangements has been characterized by litigation at both the state and federal level. Over the past decade, PageNet has prosecuted formal and

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[5] *E.g.*, Arch at 3; AT&T Wireless at 8; Bell Atlantic NYNEX Mobile ("BANM") at 4; Celpage at 5-6; PCIA at 4-6; Sprint Spectrum/APC at 3; Westlink at 14.

[7] PageNet at 20; Arch at 3-4; BANM at 4-5; PCIA at 6.

[8] Westlink at 10.

[9] Arch at 6-7.

informal complaints against a number of LECs in both federal and state fora. For example, PageNet, either individually or in concert with other CMRS providers has filed against interconnection rates in California Connecticut, Florida, Ohio, Massachusetts, and many other states This experience is also described by AT&T Wireless, which references its need to resort to litigation as well as negotiation.[13]

Moreover, the LEC reliance on the level of litigation as an indication of reasonableness is transparently self-serving. The LECs recover the cost of litigation through overheads loaded onto their services with the lowest level of demand elasticity (including interconnection charges to CMRS carriers). In contrast, paging carriers and other CMRS providers do not have pools of captive ratepayers of monopoly services available to bear litigation costs -- the costs of litigation go straight to the companies' bottom line. The avoidance of litigation costs is for many CMRS providers a business necessity, and cannot be interpreted as an endorsement of existing interconnection arrangements. Moreover, paging and other CMRS carriers do not have alternatives to interconnection with LECs. The only alternative to paying unreasonable rates is to forgo operations.

In contrast to the LECs' depictions of an equitable negotiating process, the reality for CMRS providers has been protracted debate and litigation that, despite their enormous

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[13] AT&T Wireless at 8.

cost and delay, have failed to yield fair, compensatory and procompetitive interconnection arrangements. The President of American Personal Communications recently summarized the process in a piece in the Wall Street Journal

> Interconnection pricing has tied up the FCC, carriers, Congress and the courts for decades battling over issues such as the fees that long-distance companies and cellular carriers must pay local phone companies to "terminate" calls on monopoly networks. With so many lawyers, accountants, bureaucrats and lobbyists resolving these questions, real competition hasn't emerged.[11]

Finally, several LECs argue that the CMRS market has grown significantly over the last decade, and conclude that existing interconnection arrangements have not been a barrier to entry. A number of CMRS providers have already addressed this assertion in their initial comments noting that the growth of CMRS services stems from the inherent value and convenience of the service, and that the industry's growth has occurred in spite of flagrantly unreasonable LEC interconnection rates and terms.[12] Were it not for unreasonable interconnection rates and policies, lower-cost mobile service might be available to an even wider segment of the population.

Moreover, this LEC argument fails to consider the impact of the Telecommunications Act of 1996. By granting plenary rights to fully compensated interconnection for non-CMRS

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[11] Wayne Schelle, "Disconnect the Local Phone Monopoly," Wall Street Journal, March 5, 1996, at A-14, column 3. ("Schelle article").

[12] PageNet at 5-7; PCIA at 27.

providers, the 1996 Act ensures that wireline-based competitive carriers will be compensated for terminating traffic handed off from LEC networks. The comments of CMRS providers in the instant proceeding, however, make clear that, with few exceptions, existing negotiated interconnection arrangements fail to provide CMRS providers with *any* compensation for the terminating functions they perform. As a result, if these arrangements are perpetuated, CMRS providers will be placed at a competitive disadvantage, not only vis-à-vis LECs, but also wireline-based providers of local services against which CMRS providers compete.

For all of the reasons discussed above, the record of this proceeding clearly demonstrates that existing LEC interconnection arrangements are characterized by excessive rates and unreasonable discrimination, and have a profoundly anticompetitive effect on CMRS providers. As such the Commission cannot perpetuate them, even as an interim measure, but instead must prescribe fair and fully compensatory CMRS interconnection arrangements for all CMRS providers

2. GENERAL PRICING PRINCIPLES: The Record And Established Commission Precedent Provides Ample Support For The Compensation Structure Proposed By PageNet For Paging Interconnection

Virtually all parties -- including the LECs -- agree that interconnection rates should be based on cost.[13] As the CMRS providers in this proceeding make clear, however, the LECs currently do not compensate paging carriers or other CMRS providers for the terminating functions that they perform.[14] As PageNet described in its initial comments, bill and keep is not a viable means of providing compensation for paging carriers, because, at present, virtually all of their traffic is terminating. As a result, at least as an interim measure, the Commission should establish terminating compensation rates for paging carriers by requiring the LECs to pay terminating charges to paging carriers based on the LECs' tariffed switched access rates.[15]

This approach is supported by a number of commenting parties, which hold that LEC access charges are a reasonable surrogate for charges that allow paging companies to recover the costs of terminating service on their networks.[16] Moreover, this

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[13] *E.g.*, GTE at 4; Pacific at 44-45; U S West at 54-46.

[14] Section II(A)(1), *supra*.

[15] PageNet at 26-29, 54-56 and Appendix E.

[16] Allied at 12; Celpage at 7; PCIA at 11-12.

approach is fully consistent with action that the Commission has taken in the past.

In establishing compensation rates for competitive private payphone operators ("PPOs") the Commission addressed a set of issues identical to those in the instant proceeding. Specifically, the Commission had to determine how to establish compensation rates for competitive carriers in a way that would be both equitable and administratively practicable. The Commission concluded that it could meet both goals by establishing payphone compensation rates using LEC tariffed access charges as a surrogate:

> We also reject arguments that we should base PPO compensation on the actual costs of the PPOs. Such an approach is neither feasible nor appropriate. First, individual cost data for each PPO is not available. Second, even if we attempted to elicit this data, it is questionable whether it would be of much value. PPOs are not required to adhere to our Uniform System of Accounts and therefore use a variety of accounting methodologies. In order to use the cost data provided by PPOs, we would have to make adjustments to all of this data to reflect uniform accounting principles. Third, the cost data submitted would have to be scrutinized for allowances and disallowances. The administrative and regulatory burdens entailed in these processes would be significant, to say the least.
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> On the other hand, a less burdensome cost-based approach would be both reasonable and viable. One such approach would be to examine, as a surrogate for PPO costs, the access charge compensation that a LEC receives for its regulated provision of payphones. Some parties counsel against using any such approach. These parties claim that LEC access charges do not reflect LEC costs with any precision, much less PPO costs. Nevertheless, interstate access charges have generally been determined with reference to LEC costs, which should bear at least a rough relationship to PPO costs. Moreover, we are using LEC access charge compensation only as a general surrogate, in conjunction with [other sources of data]. Therefore, we

conclude that we can legitimately place some probative weight on LEC interstate access charge compensation in setting the PPO compensation rate for interstate access code calls. In addition, this approach has the advantage of furthering competitive parity between PPO payphones and competing LEC payphones.[17]

In reaching this conclusion the Commission addressed the same issues that are presented in the instant proceeding: 1) the need to establish equitable compensation rates without undue delay; 2) the absence of useable cost data specific to the competitive providers; and 3) the need for a solution that would not unduly tax the resources of the Commission or the industry. These identical concerns compel the use of LEC switched access charges as a basis for setting terminating compensation rates payable to paging companies.[18]

Similarly, the record supports the conclusion that LECs may not impose additional charges for the transmission of traffic between the LEC switch and the paging carriers mobile telephone switching office ("MTSO"). As PageNet demonstrated in its comments, LECs are already fully compensated for providing this function by the interexchange carrier or originating end user

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17 *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3255 (1992) (citations omitted).

18 Use of existing LEC tariffed rates also provides the benefit of avoiding extensive debate over the need to develop different rates for peak and off-peak times of day. Because these considerations are already factored into currently effective LEC rates, they allow the Commission to establish fully compensatory interconnection charges for paging carriers expeditiously.

(depending on the routing of the traffic). Other affected parties show that additional LEC charges for this function would result in impermissible double-recovery by the LECs.[19]

[19] See Allied at 10; Arch at 14; Celpage at 7.

3. PRICING PROPOSALS: The Alternative Pricing Schemes Proposed By The LECs Are Unreasonable And Will Not Promote Competition

A number of LECs propose alternative mechanisms for establishing CMRS interconnection rates. As PageNet discusses below, none of these proposals constitute a reasonable alternative for termination charges based on LEC tariffed switched access rates.

LRIC Plus Ramsey Pricing:

A number of LECs propose a pricing standard for CMRS interconnection that would establish LEC rates at long run incremental cost ("LRIC"). The overhead and joint and common costs that would not be recovered through the LRIC-based rates would be recovered from other services in inverse proportion to their price elasticity of demand ("Ramsey pricing").[20] While PageNet agrees that, ultimately, interconnection rates should be based on LRIC, it has two central concerns with this proposal. First, as the Commission has recognized, the public will benefit from the establishment of procompetitive, reasonable interconnection rates as soon as possible. Because it would take years to complete a full rate case, and because such delay would disserve the public interest, compensatory and nondiscriminatory

[20] *E.g.*, Bell Atlantic at Statement of Robert W. Crandall; Pacific at Exhibit B, Exhibit D.

interconnection charges must be established using another method, at least for an interim period.

Second, the proposed Ramsey pricing model would allow LECs to allocate costs strategically and in an unreasonably discriminatory manner in order to disadvantage their competitors. The services that evidence the least degree of demand elasticity include bottleneck facilities maintained by the LECs that must be purchased by their competitors. As a result, use of the Ramsey pricing model would simply allow LECs to shift common and overhead costs -- a substantial portion of LEC total costs -- away from the LEC services that are subject to competition, and onto the interconnection elements that their competitors must pay for access to the LEC networks. Under this perverse pricing structure, LECs essentially could force their competitors to subsidize the LECs' competitive services. The Commission has already found that the strategic loading of excessive amounts of overhead to interconnection rates charged to collocating competitors is unreasonable.[21] Because the proposed Ramsey pricing model provides no assurances against the unreasonably discriminatory and anticompetitive allocation of costs to LEC competitors, it is inconsistent with prior Commission decisions and with §§ 201 and 202 of the Communications Act, and so must be rejected.

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[21] *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, 10 FCC Rcd 6375 (1995).

In addition, SBC argues that CMRS providers that interconnect at LEC tandem offices should pay an interconnection charge that reflects the costs of all end offices that subtend that tandem.[22] The Commission has already dismissed this pricing strategy, however. In the NPRM, the Commission rejected the imposition of such costs on CMRS providers:

> we do not envision that the LECs would charge CMRS providers the carrier common line charge . . . [w]e believe that such a subsidy should not be imposed upon CMRS providers. . . . [W]e are also inclined not to permit LECs to charge CMRS providers the transport interconnection charge(TIC), given that the extent to which the TIC recovers transport-related costs is unclear.[23]

SBC's assertions to the contrary, the record in this proceeding provides no grounds for the Commission to depart from these conclusions.

<u>Reliance Upon Negotiations and/or Formal Complaints</u>:

A number of LECs and LEC affiliates argue for the continued reliance on negotiation as a means of setting CMRS interconnection rates on a going-forward basis.[24] U S West augments this argument with the assertions that: 1) CMRS providers control an "access bottleneck" and so retain

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[22] SBC at 23.

[23] NPRM at ¶ 68.

[24] Ameritech at 3; BAMS at 2; SBC at 13-14; U S West at 24, 69.

negotiating leverage, and 2) that the Commission's formal complaint process is adequate to promote reasonable results.[25]

The record in this proceeding is rife with compelling evidence that the negotiation process does not lead to reasonable CMRS interconnection arrangements. As discussed in Section II(A), *supra*, virtually all of the CMRS commentors that have negotiated interconnection arrangements with LECs in the past -- including LEC subsidiaries -- have presented evidence that existing negotiated arrangements fail to comply with the LECs' obligation to provide termination compensation, include excessive and duplicative charges, and evince unreasonable discrimination.

This actual experience with a negotiated interconnection process precludes reliance on continued negotiations in the future. CMRS commentors have demonstrated that they lack negotiating leverage against the LECs,[26] and nothing short of prescriptive action by the Commission will be adequate to ensure reasonable interconnection rates, terms and conditions.

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[25] U S West at 66-69.

[26] *E.g.*, America's Carriers at IIA-2; Arch at 16; Westlink at 15.

Tying CMRS Interconnection to Access Charge Reform and
Universal Service/Carrier of Last Resort Obligations

Some LECs argue that the Commission should maintain the status quo (*i.e.*, LEC-dominated negotiations for CMRS interconnection) until the Commission can complete proceedings that resolve all matters pertaining to universal service, carrier of last resort obligations, and LEC access charge reform.[27] Such actions are unnecessary and dilatory and fail to meet the Commission's stated policy goals of stimulating competition for CMRS.

First, LEC calls for universal service policymaking and access charge reform have been used in the past in an attempt to delay procompetitive regulatory initiatives -- the Commission expressly rejected such arguments when it adopted its mandatory collocation rules in 1992.[28] Moreover, the Commission, pursuant to the Telecommunications Act of 1996, already has proceedings pending to address these issues. Delay of CMRS interconnection standards would serve no purpose other than to hinder the development of competition in that market.

Second, no LEC has quantified the cost of "universal service" or "carrier of last resort" obligations in an objective,

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27 Bell Atlantic, Statement of Robert W. Crandall, at 1; GTE at 28-29; Pacific at 77; SBC at 24

28 *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, ¶ 25 (1992).

verifiable manner. In the absence of such data, delay in the prescription of reasonable and compensatory interconnection rates for CMRS cannot be justified.

Third, these LEC arguments, if accepted by the Commission, would exacerbate the problems that the LECs are purporting to cure. By retarding the growth of CMRS services, these LEC policies would limit entry into traditionally underserved areas, and would prevent the introduction of innovative services and technologies. Such regulatory impediments to competition would restrict universal access to service, and would artificially increase customers' reliance on LECs as a sole source of service. This result was characterized in a recent Wall Street Journal article:

> Can new competitors like [American Personal Communications (marketed in the Baltimore/Washington area as Sprint Spectrum)] have access to the millions of subscribers that have had no choice for decades but to subscribe to monopoly telephone service? If we cannot send calls to those numbers on a fair basis, we will never be able to offer residential service.[29]

The Commission has already determined that interconnection policies that stimulate the growth of CMRS will serve the public interest. LEC arguments for delay in the guise of rulemaking proceedings dealing with other issues must be rejected.

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[29] Schelle article, *supra* note 11.